IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2894 of 2001

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ZAVERCHAND GAEKWAD LIMITED - Petitioner(s)
Versus
ASSISTANT PROVIDENT FUND COMMISSIONER - Respondent(s)

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Appearance :
MR KM PATEL for Petitioner(s) : 1,
MR PJ MEHTA for Respondent(s) : 1,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 17/10/2007

ORAL JUDGMENT

This petition under Articles 226 and 227 of the Constitution of India has been preferred by one Zaverchand Gaekwad Limited, an employer within the

meaning of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, against the order dated 22nd February, 2001 made by the Assistant Provident Fund Commissioner-Cum-Assessing Officer, Baroda determining a sum of Rs.44,711=00, the amount of provident fund contribution by the employer in respect of the wages of Rs.2,50,902=65 paid to thirty employees.

Mr.Patel has appeared for the petitioner-employer and has assailed the impugned order dated 22nd February, 2001. Mr.Patel has submitted that in Recovery Applications Nos.2/1992 to 60/1992, by order dated 1st February, 1993 made by the Labour Court, Baroda, the petitioner was directed to pay the aforesaid sum of Rs.2,50,902=65, the amount of wages for the period from 1st November, 1991 to 7th July, 1992, to the respondents - 30 workmen. The said order was challenged before this Court in Special Civil Application No.4606/1993. Pending the said petition, under the interim direction issued by the Court, the said amount was deposited in the Court and was allowed to be withdrawn by the workmen. Hence, the

deposit of the said amount in the Court was not the payment of wages to the workmen. Nor the amount of employees' contribution to the provident fund was deducted from the said amount nor the petitioner should be asked to make its own contribution in respect of the said amount.

By order made on the aforesaid Special Civil Application No.4606/1993 today, the above-referred order dated 1st February, 1993 made on Recovery Applications Nos.2/1992 to 60/1992 has been quashed and set-aside. The sum of Rs.2,50,000=00 recovered by the workmen has been ordered to be treated as ex-gratia payment to the workmen. In that view of the matter, the said amount cannot be said to be the wages paid to the workmen-employees. Neither the employees are required to make provident fund contribution in respect of the said amount nor the employer would be liable to make its own contribution in respect of the said amount.

In my view, therefore, the cause of action for recovery of the amount of provident fund does not

survive.

For the aforesaid reasons, the petition is allowed. The impugned order dated 22nd February, 2001 made by the Assistant Provident Fund Commissioner-Cum-Assessing Officer, Baroda is quashed and set-aside. Rule is made absolute. The parties will bear their own cost.

(Ms. R.M.Doshit, J.)

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